

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS. PROBATE AND FAMILY COURT

DOCKET NO.: 94E-0216-G1

EQUITY

EMILY A. TROPEANO,
 Individually and as
 Executrix of the Estate of Joseph C.
 Tropeano or Successor to his Interest,
 Plaintiff,

VS.

ALFRED P. TROPEANO, PHILIP TROPEANO
 and PETER TROPEANO, Individually, as
 Trustees of the T & N Realty Trust, and
 Partners of the Captain Parker Arms
 Partnership and CAROLINE PATTEN,
 Individually and as Partner of the Captain
 Parker Arms Partnership, Parker Arms
 Partnership, and LAURENCE L. TROPEANO,
 Individually and as Trustee of the
 T & N Realty Trust,
 Defendants.

DEPOSITION of ALFRED P. TROPEANO, taken
 pursuant to Notice Under the Mass. Rules of
 Civil Procedure, before Rebecca Day, a
 Professional Shorthand Reporter and Notary
 Public in and for the Commonwealth of
 Massachusetts, at the Law Offices of Barry C.
 Abelson & Associates, 420 North Main Street,
 Randolph, Massachusetts, on February 26, 1996,
 commencing at 10:50 a.m.

* MELVIN LIPMAN *
 * 44 BROMFIELD STREET *
 * BOSTON, MA 02108 *
 * (617) 227-3985 *

LASER STOCK FORM B

THE CORBY GROUP 1-800-255-5040

A P P E A R A N C E S:

Law Offices of Barry C. Abelson & Associates
(By: Jill M. Bradley, Esq.)
420 North Main Street
Randolph, MA 02368
On behalf of the Plaintiff,
Emily A. Tropeano

Frederick J. Conroy, Esq.
114 Waltham Street
Lexington, MA 02173
On behalf of Alfred P. Tropeano
and Laurence L. Tropeano

Sloane & Walsh
(By: Lawrence J. Kenney, Jr., Esq.)
Three Center Plaza
Boston, MA 02108
On behalf of Philip Tropeano,
Peter Tropeano and Caroline Patten

Also Present:
Oona Tropeano
and Thomas Tropeano

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I N D E X

DEPOSITION OF	DIRECT	REDIRECT
ALFRED P. TROPEANO,		
(by Ms. Bradley)	9-66	92-95
	CROSS	RECROSS
(by Mr. Conroy)	66-88	91-92
(by Mr. Kenney)	88-91	

E X H I B I T S

NO.		PAGE
1	Notice of Deposition	11
2	Document regarding the Sale of Partnership Interest	13
3	Receipt and Assignment	13
4	1991 U.S. Partnership Return of Income	15
5	1992 U.S. Partnership Return of Income	16
6	1993 U.S. Partnership Return of Income	19
7	1994 Rent-roll	25

E X H I B I T S

	NO.		PAGE
1			
2			
3	8	1993 Rent-roll	26-27
4			
5	9	1992 Rent-roll	27
6			
7	10	1991 Rent-roll	27
8			
9	11	1994 Disbursements Journal	30
10			
11	12	Letter to Emily Tropeano	
12		from Alfred Tropeano,	
13		dated 9/12/85	33
14			
15	13	Letter to Emily Tropeano	
16		from Alfred Tropeano,	
17		dated 7/25/90	36
18			
19	14	Document "To The Partners	
20		Of Captain Parker Arms",	
21		dated 1/6/86	38
22			
23			
24			

LASER STOCK FORM B

THE CORBY GROUP 1-800-255-5040

E X H I B I T S

	NO.		PAGE
1			
2			
3	15	Document regarding Captain Parker Arms,	
4		signed by Alfred P. Tropeano,	
5		Wilbur C. Nylander and Emily Tropeano,	
6		dated 7/20/87	40
7			
8	16	Document regarding Captain Parker Arms	
9		signed by Alfred P. Tropeano,	
10		Wilbur C. Nylander and Emily Tropeano,	
11		dated 7/25/88	46
12			
13	17	Joseph C. Tropeano Family Trust	
14		and Transfer Of Shares Of T & N	
15		Realty Trust To Joseph C.	
16		Tropeano Trust	50
17			
18	18	Letter and enclosures addressed	
19		to Emily Tropeano from Alfred Tropeano,	
20		dated 10/28/91	56
21			
22	19	Appraisal of the apartment	
23		complex Captain Parker Arms	56
24			

LASER STOCK FORM B

THE CORBY GROUP 1-800-255-5040

E X H I B I T S

	NO.		PAGE
1			
2	20	1988 and 1989 Distribution Letter	59
3			
4			
5	21	Letter to Emily Tropeano	
6		from Alfred Tropeano,	
7		dated 10/3/90	61
8			
9	22	Letter to Alfred Tropeano	
10		from William Talis regarding	
11		Emily Tropeano, dated 9/4/92	61
12			
13	23	Letter and enclosures addressed	
14		to William Talis from Alfred Tropeano,	
15		dated 9/28/92	63
16			
17	24	Letter to Alfred Tropeano	
18		from Emily Tropeano, dated 8/6/90	65
19			
20	25	Schedule of Wilbur C. Nylander	69
21			
22	26	Letter to Emily Tropeano	
23		from Alfred Tropeano, dated 1/6/86	73
24			

LASER STOCK FORM B

THE CORBY GROUP 1-800-255-5040

E X H I B I T S

	NO.		PAGE
1			
2			
3	27	Letter to Alfred Tropeano	
4		from John Lawson, dated 1/7/86	73
5			
6	28	Letter to Alfred Tropeano	
7		from John Lawson, dated 9/15/86	74
8			
9	29	Letter and enclosure to John Lawson	
10		from Alfred Tropeano, dated 9/19/86	74
11			
12	30	Document addressed to John Lawson	
13		from Alfred Tropeano, dated 9/22/86	75
14			
15	31	Letter to Emily Tropeano	
16		from Alfred Tropeano, dated 3/20/92	75
17			
18	32	Letter to William Talis	
19		from Alfred Tropeano, dated 6/2/93	75
20			
21	33	Modification document	
22		and attached Schedules	84
23			
24			

E X H I B I T S

NO.		PAGE
34	Letter to Alfred Tropeano from William Talis, dated 8/2/85	93
35A	Durable Power of Attorney of Joseph C. Tropeano	94
35B	Certificate of Nonrevocation of Durable Power of Attorney	94

1 P R O C E E D I N G S

2 MS. BRADLEY: Do you want Mr. Tropeano to
3 read and sign?

4 MR. CONROY: Yes.

5 MS. BRADLEY: Do you want it notarized?

6 MR. CONROY: I'll waive it, if you do.

7 MS. BRADLEY: All right. And we are going
8 to have the usual stipulations: All objections,
9 except as to form, and motions to strike.
10 Everything else is waived until the time of
11 trial.

12 MR. KENNEY: All objections, except as to
13 form and motions to strike, are reserved until
14 the time of trial.

15 MS. BRADLEY: Right.

16 (Witness sworn)

17 ALFRED P. TROPEANO,
18 a witness called for examination by counsel for
19 the Plaintiff, being first duly sworn, was
20 examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. BRADLEY:

23 Q. Okay. Good morning, Mr. Tropeano. I'll
24 just explain to you that if you don't understand

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THE CORBY GROUP 1-800-255-6040

1 before. I had 40 percent and the others had 15
2 percent. ^{each.} It would show the 15 percent that was
3 divided.

4 MS. BRADLEY: Okay. I'm going to mark the
5 1992 U.S. Partnership Return, as well.

6 (Document marked as
7 Exhibit No. 5 for identification)

8 Q. Okay. Now, I'm going to show you --

9 MS. BRADLEY: Would you like to see the 1992
10 Partnership Return before I show it to him?

11 MR. CONROY: Yes (observing document).

12 Q. Okay. Now, I want you to look at the page
13 which is in front of you. Can you tell me what
14 happened in 1992, that you now have three
15 additional parties who have interests in the
16 Captain Parker Arms Partnership?

17 A. Okay (observing document). Well, Nylander
18 died and his interest went to his daughter. He
19 had a 17 point fraction percent interest. It
20 went to his -- half went to his daughter and the
21 other remaining half went to his two
22 grandchildren.

23 Q. All right. And do you recall how long this
24 arrangement continued with each of those three

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THE CORBY GROUP 1-800-255-5040

1 parties?

2 A. Until they sold out to Captain Parker
3 Arms. You have the document in there. They
4 transferred their interests.

5 Q. And can you explain how that buyout came
6 about?

7 A. They wanted their cash, and so it was
8 appraised at the value shown on the agreement,
9 which was \$4,966,000. And then there was the
10 deduction of approximately \$2,400,000, and there
11 were the other deductions that made each
12 person's interest at 17.65 percent to be
13 \$444,771.

14 And then on the page where they acknowledged
15 the receipt, they transferred their interests in
16 the real estate to myself, and to Louie, and to
17 Phil. So then I wound up with 57.14 percent,
18 and each of the others wound up with 21.43
19 percent.

20 Q. All right. I want to direct your attention
21 to Exhibit 2 and show you that, again. You have
22 "Purchase Price" on the first page there, and
23 then you have in the middle, "Deduct amount due
24 Estate of Joseph C. Tropeano." Now, where did

LASER STOCK FORM B

THE CORBY GROUP 1-800-255-5040

1 Q. This is a letter that you produced. Can
2 you look at it?

3 A. (Observing document).

4 (Off the record discussion)

5 Q. Have you had a chance to review that
6 letter?

7 A. Yes.

8 Q. Okay. Can you explain what happened during
9 this time period that caused you to write that
10 letter?

11 A. Well, Joe had died and then Joe's estate
12 was entitled to income up until the date of his
13 death and made payable to her as the executrix
14 or -- well, that check must have been made
15 payable to the estate of Joe Tropeano. She had
16 not been appointed as the executrix at the time.

17 Q. When did you first approach Emily Tropeano
18 about buying her interest?

19 A. I never approached Emily Tropeano about
20 buying her interest. When Joe died, the real
21 estate interest ceased to be real estate and
22 became personal property. Emily never had
23 anything to sell.

24 Q. Then how do you explain how Wilbur

LASER STOCK FORM B

THE CORBY GROUP 1-800-255-5040

1 Nylander's heirs had something to sell to you?

2 A. Because the partnership agreement,
3 reconstructed at that time, had provided that
4 any deceased partner's share would go to ^{those} the
5 named ^{large} principals. And there was a schedule for
6 Nylander's estate that provided that his
7 interest would go to his children, his daughter
8 and grandchildren.

9 Q. Were you aware, though, that Joe Tropeano's
10 interest went to his wife?

11 A. Beg your pardon?

12 Q. Were you aware that Joseph Tropeano's
13 interest went to his wife?

14 A. When Joe died, the interest that Emily
15 received was the value of the real estate being
16 personal property. And the surviving partners
17 had to administer that as trustees for them, so
18 the partnership terminates the interest in the
19 real estate.

20 Q. Okay. But your letters --

21 A. She was represented by counsel, Goldstein &
22 Manello. And it was agreed with Goldstein &
23 Manello, and they knew and some of the others in
24 there, that Joe's interest became personal

1 value of the real estate.

2 Q. All right. Did you ever discuss that with
3 her?

4 A. With her lawyers.

5 Q. When did you discuss this with her lawyers?

6 A. Shortly after Joe died. When the will was
7 being probated, we discussed the value and I
8 told her lawyer, and there is a letter in there,
9 that John Hancock had appraised the property at
10 \$3,600,000. So then he wanted -- later on, he
11 wanted the value of the personal property and so
12 forth, and a letter was sent to him setting
13 forth the personal property and the value in
14 there.

15 Q. And do you know what time period you are
16 referring to?

17 A. It was while the estate -- while the will
18 was being probated in there.

19 Q. And now, you referred to a value that was
20 completed by John Hancock. And what year was
21 that completed?

22 A. Well, the mortgage went on for \$2,500,000.

23 Q. What year was that?

24 A. 19 -- let me see the other exhibit.

LASER STOCK FORM B

THE CORBY GROUP 1-800-255-5040

1 Declaration of Trust that was nonexistent in
2 1963. There was a 1962 trust.

3 Q. Well, that trust that you are referring to
4 set up what everyone's interest in the
5 partnership was, though?

6 A. As I stated before, the shares were never
7 issued. They were signed and no considerations
8 were ever paid. Originally, we were going to
9 set up shares and everybody had received copies
10 of the proposed documents.

11 We had a meeting with the accountant, and it
12 developed that by setting up the shares it would
13 have been taxed as a corporation. And
14 therefore, we would ~~file~~^{form} a partnership to avoid
15 the corporate taxes on that. ✓

16 And the partnership agreement specifically
17 provided that the title would be taken in the
18 T & N Realty Trust, dated -- to my recollection
19 it was 1962, the partnership agreement in
20 there. And therefore, we never would have had
21 any shares, and no corporate tax returns were
22 ever filed and no corporate books were ever
23 kept.

24 Q. But the property was held in a trust?

1 A. The title was. The partnership was the
2 beneficiary, so the trust only had the ~~negative~~ ^{legal}
✓3 ~~title~~ ^{equitable} ~~legal~~ title ^{to} of the beneficiaries, which
4 would be the Captain Parker Arms Partnership.

5 Q. Okay. So you view this as not valid? Is
6 that what you are saying?

7 A. That's correct. The first time that I ever
8 heard it come up was after the deposition.

9 Q. So it was news to you that this document
10 ever existed?

11 A. I never saw this document.

12 Q. Okay.

13 MR. CONROY: Excuse me. There were two
14 documents.

15 MS. BRADLEY: Well, what I refer to as a
16 "document" is Exhibit 17, which is both the
17 trust and the transfer. Is that what you're
18 referring to?

19 MR. CONROY: I think he just told you that
20 one of documents that he recently learned
21 about -- I think it was pretty clear. He didn't
22 know about Joe's trust. He was certainly aware
23 that they had negotiated the use of their
24 shares. Maybe I misunderstood your question.

*** C E R T I F I C A T E ***

I, ALFRED P. TROPEANO, do hereby certify
that I have read the foregoing transcript of my
testimony, and further certify that said
transcript is a true and accurate record of said
testimony. SEE ERRATA SHEET.

Dated at Springton MA, this 22
day of April, 1996.

Alfred P. Tropeano

LASER STOCK FORM B

THE CORBY GROUP 1-800-255-5040

Errata Sheet

Re: Emily A. Tropeano

Vs. Alfred P. Tropeano, et al

Deposition of Alfred P. Tropeano on February 26, 1996.

1. Page 15, Line 14. Change the word "writes" to "brings"
2. Page 16, Line 2. After the word "percent" add the word "each"
3. Page 26, Line 2. Change the word "background" to "back rent"
4. Page 35, Line 4. Change the word "the" to "those"
5. Page 35, Line 5. Add the words "by the" between the words "named" and "principals"
6. Page 41, Line 8. Change the word "account" to "accounting"
7. Page 52, Line 14. Change the word "find" to "form"
8. Page 53, Line 2. Change the word "negative" to "legal title"
9. Page 53, Line 3. Change the word "legal" to "equitable" and the word "of" to "to"
10. Page 62, Line 12. Change the word "assigned" to "signed"
11. Page 71, Line 18. Delete one "that"
12. Page 77, Line 22. Change the words "the trust" to "them," delete the period, and change the capital "T" to a lower case "t" on the word "That" so that it reads "no charge to them, that was"
13. Page 78, Line 15. Delete the words "and I am saying"
14. Page 79, Line 16. Delete the words "for a --" and insert "per acre"
15. Page 82, Lines 5 and 14. Change the word "Harbor" to "Hartwell"
16. Page 92, Line 7. Change the words "that there" to "the motion".